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No. 969

In the Supreme Court of the United States

October Term, 1962

Marcos Perez Jimenez, petitioner

v.

Guy W. Hardy, United States Marshal, Southern District of Florida, Miami Division, and Manuel Aristeguieta, Consul General of the Republic of Venezuela, Miami, Florida

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1962.

No. 958

MARCOS PEREZ JIMENEZ, PETITIONER

v.

GUY W. HIXON, UNITED STATES MARSHAL, SOUTHERN DISTRICT OF FLORIDA, MIAMI DIVISION, AND MANUEL ARISTEGUIETA, CONSUL GENERAL OF THE REPUBLIC OF VENEZUELA, MIAMI, FLORIDA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

We address ourselves only to the surprising statement in petitioner's reply memorandum (p. 8) that " . . . the Secretary of State could, under [his] broad review power, reverse the magistrate's finding in this case that there was insufficient evidence to support the murder charges against petitioner." There is no basis whatever for the contention. Nor has the Secretary of State ever claimed such power.

Nothing in petitioner's authorities supports his statement. The three opinions cited in the memorandum (p. 8, notes 8–10) go only to the question whether the Secretary may re-evaluate the evidence which the committing magistrate has found *sufficient*. Thus, Solicitor General Phillips concluded that such a reexamination "gives to the party charged the double protection of a concurrence of views upon all questions affecting his guilt under the treaty by the magistrate and the Secretary before he is to be surrendered." 17 Op. Att'y Gen. 184, 187. No one, to our knowledge, has ever suggested the contrary—that the Secretary may hold sufficient the evidence which the magistrate has found inadequate. Indeed, the relevant statutes make it clear that this is not the case. The Secretary of State may surrender only a "person committed under sections 3184 or 3185 of [Title 18]," 18 U.S.C. 3186, and committal under section 3184 occurs only if the magistrate "deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention." 18 U.S.C. 3184. While there has been some debate as to the Secretary's freedom to disregard the magistrate's finding of probable cause and refuse surrender on the ground of his own dissatisfaction with the evidence, it has been understood from the beginning that the magistrate's finding of insufficient evidence is final and binding on the Executive Department. See 6 Op. Att'y Gen. 91; Spear, *The Law of Extradition* (1879), pp. 214, 220, 223–224; 1 Moore, *A Treatise on Extradition and Interstate*

Rendition (1891), p. 550; Hawley, *The Law and Practice of International Extradition* (1893), pp. 26, 37.

Respectfully submitted,

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May 1963.